UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MARATHON PETROLEUM CO., LP, d/b/a CATLETTSBURG REFINING, LLC **Petitioner,** **v.** **NATIONAL LABOR RELATIONS BOARD,** **Respondent.**	**CASE NO. _____**

PETITION FOR REVIEW

Petitioner Marathon Petroleum Co., LP hereby petitions the Court to review and modify or set aside the Decision and Order of the National Labor Relations Board issued against Petitioner on July 18, 2018, in NLRB Case No. 09-CA-162710. A copy of the Decision and Order reported at 366 NLRB No. 125 (July 18, 2018) is attached, along with a Corporate Disclosure Statement.

Respectfully,

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Marathon Petroleum Co., d/b/a Catlettsburg Refining, LLC *and* United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, and its Local 8-719. Case 09–CA–162710

July 18, 2018

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS PEARCE AND MCFERRAN

On September 1, 2016 Administrative Law Judge Thomas M. Randazzo issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel and Charging Party filed answering briefs, and the Respondent filed a reply brief. The General Counsel filed a limited cross-exception and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order as modified.[2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Marathon Petroleum Co., d/b/a Catlettsburg Refining, LLC, Catlettsburg, Kentucky, its officers, agents, successors, and assigns shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(b).

"(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act."

2. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. July 18, 2018

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John F. Ring, Chairman

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Mark Gaston Pearce, Member

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Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

Although Chairman Ring adopts the judge's finding that the Respondent violated Sec. 8(a)(5), he notes that the Respondent's duty to furnish information in response to the Union's May 21 and September 18, 2015 requests may not be so clear. In a case like this one, where (i) the parties' collective-bargaining agreement reserved to the employer the right to subcontract routine maintenance work unilaterally and thus waived the union's right to bargain over the subcontracting of such work, (ii) the parties also had a side agreement to engage in mid-term discussions—not bargaining—regarding ways to preserve routine maintenance work for unit employees, and (iii) the side agreement reiterated the contractual bargaining waiver by providing that the transfer of contracted-out maintenance work to unit employees remained within the employer's sole discretion, the employer may not have an obligation to provide requested information regarding the costs of subcontracting, absent evidence that the employer had actual or constructive notice of some other basis for the request. See, e.g., *American Stores Packing Co.*, 277 NLRB 1656, 1658–1659 (1986); *Emery Industries,* 268 NLRB 824, 824–825 (1984). However, because no such argument was raised to the administrative law judge in this case, Chairman Ring does not reach or address it here. The Chairman observes, however, that in *Pall Biomedical Products Corp.*, cited by his colleagues, the "meet and discuss" agreement lacked the context present here: it was not entered into against the background of a contractual bargaining waiver, and it did not reiterate the employer's right to act unilaterally with respect to the subject to be discussed. See 331 NLRB 1674 (2000), enf. denied on other grounds 275 F.3d 116 (D.C. Cir. 2002).

Contrary to the Chairman, we do not agree that the facts he describes, or anything in the side agreement itself, would amount to a waiver even had such an argument been properly raised to the judge. We also find no merit to his suggestion that the side agreement's requirement to meet and discuss the preservation of bargaining unit work may not give rise to a bargaining obligation. See generally *Pall Biomedical Products Corporation*, 331 NLRB 1674 (2000) (employer required to furnish information pursuant to letter of agreement stating parties will "meet to discuss" matters related to nonunit employees' performance of bargaining unit work), enf. denied on other grounds 275 F.3d 116 (D.C. Cir. 2002). Further, neither *American Stores Packing* nor *Emery Industries* involved a side agreement that the parties would meet and discuss certain terms and conditions of employment, and therefore are clearly factually distinguishable.

[2] We shall modify the judge's recommended Order and substitute a new notice to conform to the Board's standard remedial language.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, and its Local 8-719 (the Union) by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL furnish to the Union in a timely manner the information requested by the Union on May 21, 2015 and September 18, 2015.

MARATHON PETROLEUM CO., D/B/A CATLETTSBURG REFINING, LLC

The Board's decision can be found at www.nlrb.gov/case/09-CA-162710 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

John Duffey, Esq., for the General Counsel.
Eric Gill, Esq., for the Charging Party.
Raymond Haley, Esq., for the Respondent.

DECISION

STATEMENT OF THE CASE

THOMAS M. RANDAZZO, Administrative Law Judge. This case was tried in Catlettsburg, Kentucky, on April 26, 2016. The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, and its Local 8–719 (the Charging Party, Union, or Steelworkers) filed the instant charge on October 26, 2015,[1] and the General Counsel issued the complaint on February 25, 2016, alleging that Marathon Petroleum Co., d/b/a Catlettsburg Refining, LLC (the Respondent) violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) by, since on or about May 21, 2015, refusing to furnish the Union with information it requested which was necessary and relevant to the performance of its duties as the collective-bargaining representative of the bargaining unit employees. Specifically, the complaint alleges that the Respondent failed and refused to furnish: ". . . the wage/roll up/overhead costs of [the] contractor employees. . . [including] any premiums and margins paid to the contractor firms and any bonus/completion milestones paid to them." (GC Exh. 1(c).)[2]

On the basis of the entire record,[3] my determination of credible evidence,[4] and after considering the briefs filed by the General Counsel, the Union, and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a limited liability corporation with a principal office in Findlay, Ohio, and a place of business in Catlettsburg, Kentucky, has been engaged in the business of refining, transporting, and marketing gasoline and other petroleum products throughout the United States. In conducting its operations, the Respondent annually sold and shipped from its Catlettsburg, Kentucky facility, goods valued in excess of $50,000 directly to points outside the Commonwealth of Kentucky. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

[1] All dates are in 2015 unless otherwise indicated.

[2] At the trial, the General Counsel amended par. 6(a) which reads "Include any previous and margins paid to the contractor firms," to correctly read "Include any premiums and margins. . . . " Complaint par. 4 was also amended to allege the Respondent's maintenance manager's last name was correctly spelled "Estep." (Tr. 10.)

[3] Abbreviations used in this decision are as follows: "Tr." for transcript; "GC Exh." for General Counsel's Exhibit; "U. Exh." for the Union's Exhibit; "R. Exh." for Respondent's Exhibit; "GC Br." for the General Counsel's brief; "U Br." for the Union's brief; and "R. Br." for Respondent's brief.

[4] In making my findings regarding the credible evidence, including the credibility of witnesses, I considered the testimonial demeanor of such witnesses, the content of their testimony, and the inherent probabilities based on the record as a whole.

II. ALLEGED UNFAIR LABOR PRACTICES

The Facts

The Respondent operates an oil refinery facility in Catlettsburg, Kentucky, where it employs 743 employees. The Union represents 391 of those employees for the purposes of collective bargaining. The Union and Respondent have a bargaining relationship that dates back to the 1940s, and the Respondent has recognized the Union as the exclusive collective-bargaining representative of the employees in a unit consisting of operating and maintenance employees. That recognition has been embodied in successive collective-bargaining agreements. In the parties' 2012–2013 collective-bargaining agreement, article I, section 3 specifically describes the collective-bargaining unit as:

> Refinery Employees, hereinafter referred to as "employees," shall consist only of operating, maintenance, and hourly employees on special assignments such as but not limited to Fire and Rescue, Oil Response, Air Monitoring and other such assignments at the Catlettsburg Refinery who now or later shall be working in classifications listed in this agreement and such other classifications of a similar nature as may be added to this Agreement by written agreement. This shall include all employees at the former No. 1 Refinery, formerly known as the Leach Refinery (including the United Fuel Gas Company property adjacent to the Leach Refinery); on the property of the old Tri-State Refinery in Kenova, W.Va.; at the New Lube Plant; at the New Loading Rack, Roofing Plant and related marketing tanks at Viney Branch; and the refinery tankage and processing equipment in the former Dump Area, the former No. 2 Refinery (constructed for the Defense Plant Corporation), the North Product Tank Farm, the former H-Coal property and the No. 1 storeroom employee(s), but shall not include supervisory employees, clerical employees, storeroom employees at the current No. 2 Refinery (warehouses), laboratory employees other than Process Control Laboratory employees, technical service employees, guards, technically and professionally trained employees employed as such working in their profession, co-ops, and trainees for positions not covered by the Agreement. The word "employees" as used in the Article shall include such operating and maintenance employees as the company may assign construction in accordance with the provisions of this Agreement. (R. Exh. 1 (2012-2015 CBA).)

The Respondent is part of a multiemployer bargaining association that bargains with the International Union over a "National Oil Bargaining Policy" (NOBP). (Tr. 16, 94.) The most recent negotiations between the multiemployer bargaining association and the Union included efforts by the Union to return contracted out routine maintenance work to the bargaining unit. (Tr. 101.) After the parties' 2012–2015 collective-bargaining agreement expired on January 31, 2015, the Union went on strike from February 1 to April 3, 2015. The nationwide strike against the Respondent and certain other selected employers was motivated in part by the erosion of the bargaining unit due to maintenance work being awarded to outside contractors.

On March 12, 2015, the multiemployer bargaining association and the International Union reached an agreement on the basic parameters of a collective-bargaining agreement (referred to as a "pattern agreement"). On April 1, 2015, the parties signed a tentative agreement for the Respondent's Catlettsburg location, which incorporated the pattern agreement. (GC Exh. 2; Tr. 16–18.) That most recent agreement is effective by it terms from February 1, 2015, through January 31, 2019, and the bargaining unit's ratification of that agreement on April 3, 2015, resulted in an end to the strike.

One provision of the pattern agreement consisted of a "Letter Agreement" regarding "Maintenance Training and Development" applicable only to the Union represented refineries and chemical plants, such as the Respondent's Catlettsburg plant. (GC Exh. 2, p. 2.) Respondent Human Resources Manager Greg Jackson testified that one of the Union's major proposals during the negotiations was to convert contractor employees to unit employees, and that essentially resulted in the letter agreement on maintenance training and development after the strike. (Tr. 101.) That letter confirmed the parties' understanding regarding maintenance training and development, and maintenance craft needs. In it, the parties recognized "that skilled maintenance workers are essential to ensuring safe, efficient, and reliable operations," and the parties agreed to meet to "discuss ongoing opportunities in the area of maintenance recruitment, development and day-to-day routine maintenance craft needs." Such discussions were to be concluded within 180 days of the date of ratification. (GC Exh. 2, p. 2.) In that letter, the parties also specifically agreed to meet within the same specified time period to discuss "[w]ays in which day-to-day routine maintenance work currently performed by contractors could be efficiently performed by bargaining unit employees." Finally, the parties agreed that, at the conclusion of such discussions, the Respondent would develop and share the projected maintenance hiring plans and timelines for implementing such plans with the local union. (GC Exh. 2, p .2.)

The Letter Agreement further provided that "the information relevant to this discussion may be considered confidential and proprietary, and may require the signing of a Confidentiality Agreement." (GC Exh. 2, p. 3.) In addition, a dispute resolution provision was discussed, stating that:

> In the event either party fails to discuss and share the data identified above … the matter may be referred by either party to the USW Chair of the National Oil Bargaining Program and the Company's Senior Human Resources Representative (the Chairs) who shall meet and attempt to resolve such issue. Should no resolution be reached, the USW Chair shall retain the right to have the union file and process a grievance regarding the dispute into an expedited procedure to be developed by the Chairs. (GC Exh. 2, p. 3)

While this provision provides that either party "may" submit failures to share information to a dispute resolution process, it does not require it as a mandatory action, and the parties did not utilize it with regard to the information requested in this matter.

On April 8, 2015, Union Recording Secretary Roy Claar hand delivered a letter to Jackson, requesting that pursuant to the tentative agreement and its National Oil Bargaining Policy

letter on maintenance training and development, the Respondent discuss and bargain over the ways in which routine maintenance work currently being performed by contractor employees might be performed by bargaining unit employees. (GC Exh. 3; Tr. 19–21.) In an April 20, 2015 email, Jackson informed Claar of his agreement to meet and bargain pursuant to the Union's request. (GC Exh. 3A.)

On May 21, 2015, Claar hand delivered a written information request to Jackson pertaining to the upcoming bargaining over maintenance, training and development and the parties' discussions for returning routine maintenance work to the bargaining unit. (GC Exh. 4.) The Union's request for information consisted of 9 items, the second of which requested that the Respondent:

> Provide the wage/roll up/overhead costs of these contractor employees. Including any premiums and margins paid to the contractor firms and any bonus/completion milestones paid to them." (GC Exh. 4.)

The "roll up costs" refer to the costs that go into a contractor's billable rate, such as: base wage rates paid to the employees; fringe benefit payments; workers' compensation costs; social security costs; federal and state unemployment insurance costs; overhead costs for the contractor; and profit for the contractor. (Tr. 124.) Claar and Local Union President Brett Queen credibly testified that the purpose for requesting the information was related to the tentative agreement and National Oil Bargaining Policy Letter Agreement on Maintenance Training and Development, and the ways in which day-to-day routine maintenance work currently performed by contractor employees could be efficiently performed by the bargaining unit employees. (Tr. 24–26, 70–73; GC Exh. 2.) Queen further credibly testified that the information requested in Item No. 2 would be reflected in the "roll up" costs, and that inherent in the roll up overhead costs of the contractor employees are the premiums and margins paid to the contractor firms and the bonus completion milestones paid to them. (Tr. 81–82.)

The Respondent acknowledged that some of its contracts with outside vendors for the performance of routine maintenance work at the Catlettsburg facility contain the cost plus roll-up information broken down as requested by the Union in the second item of the information request, but that some contracts contain only "all-in" costs that are not broken down by category. (Tr. 124–125.)

On August 6, 2015, as set forth in the tentative agreement, the parties executed a confidentiality agreement to provide protection for the information to be provided in response to the Union's May 21 information request. (GC Exh. 5.) The confidentiality agreement, consisting of three full pages and a signature page, was executed by Jackson on behalf of the Respondent and Claar on behalf of the Union. The agreement provides, inter alia, that: all information provided to the Union must be kept confidential and cannot be disclosed without the Respondent's written consent; the information shall only be transmitted to those who "need to know" the information; the Union is responsible for any breach of the agreement by its representatives; the Union must disclose to Respondent if it is required to disclose information via subpoena so that Respondent may seek a protective order; the Union must keep a record of persons who are permitted to access the information; the Respondent shall not have liability to the Union as a result of the use of the information; the Respondent is entitled to specific performance and injunctive relief upon breach of the agreement; and if the Union is required to disclose the information by court order the Union shall move the court to file it under seal or through some comparable protective mechanism. (GC Exh. 5.)

On August 7, 2015, the Respondent provided the Union with information in response to all of the May 21 requests, with the single exception of the wage, roll up, and overhead costs of the contractor employees requested in the second item. Instead of furnishing that information, the Respondent wrote:

> We do not understand the relevance of this request; please explain. Contracting supplemental workers is a means to expand and contract our workforce to meet the cyclical nature of our business, and the costs do not alter the Company's need to maintain that operational flexibility. In addition, this request involves highly sensitive, confidential information involving the Company's business relationships with third parties. Disclosing such information could damage the Company's ability to reach agreements with these third parties. (GC Exh. 6; R. Exh. 4 (with attachments).)

On August 13, 2015, the parties met to bargain as required by the tentative agreement. Jackson and several of Respondent's other representatives met with the Union's representatives, which included Claar, Queen, International Union Representative Alan Sampson, and Union Vice-President Dave Martin. In that meeting, Jackson asked Sampson to start looking for ways that the bargaining unit employees could efficiently perform day-to-day routine maintenance work. (Tr. 102–103.) Sampson told Jackson that the Union needed him to do the same, and Jackson responded that he believed the outside contractors were already performing the work efficiently. (Tr. 102–103.) Jackson testified that Sampson then said he had everything he needed from the information request.[5] (Tr. 104.)

[5] Jackson's testimony that Sampson stated he "had everything he needed" from the information request was unrebutted. However, the evidence fails to show why Sampson would make such a statement when the evidence clearly establishes that the Union continued to seek the disputed information. As discussed more fully below, contrary to Sampson's statement, on September 14 Claar informed Jackson that the information was needed to prove the unit employees could perform the work more efficiently (Tr. 31). In addition, the fact that the Union renewed its request for that information on September 18 contradicts Sampson's assertion that he "had everything he needed." Finally, on October 5, after Jackson received the Union's second request for the information, he never informed the Union that he would not provide it because Sampson already said he had everything he needed. Instead, Jackson informed the Union that he believed there was a failure to demonstrate "a legitimate purpose for the requested subcontracting costs. . . . " (GC Exh. 12.) If the union officials truly had everything they needed from the information request, it is reasonable to believe Jackson would have told them that they already conveyed their satisfaction with the documents provided. Since the undisputed record establishes that the Union continued to seek the information requested in

On September 14, 2015, the parties met again to bargain over the return of routine maintenance jobs to the bargaining unit. Jackson, Respondent Maintenance Manager Mark Estep, and other managers were present on behalf of the Respondent. Claar, Queen, and Martin were present among those representing the Union. In that meeting, the Union proposed "a list of jobs that may be returned to and performed only by bargaining unit members." Those listed jobs consisted of approximately 25 routine maintenance positions. (GC Exh. 8.) Jackson asked the Union officials to explain why bargaining unit employees should do maintenance work presently being performed by contractor employees. Claar informed Jackson that the bargaining unit could perform the work more efficiently and that the unit employees were more familiar with the plant and the maintenance work than the contractor's employees. (Tr. 30.) Claar testified that Jackson told the Union officials they had to prove that the unit employees could do the work more efficiently. (Tr. 31.)[6] Union Committeeman Wes Kinder told the Respondent's officials "we have no information on the contractors and what they cost." (Tr. 118; GC Exh. 7.). Claar testified that when the Respondent stated that the Union had to prove the unit employees could do the work more efficiently, he responded that the Union "need[ed] those contractor rates to prove that we [the unit employees] can do the work more efficiently." (Tr. 31.)[7] In response, Estep stated: "we can't give that to you," and he asserted the information was confidential. (Tr. 31–32.) Claar reiterated that the Union needed the information for the Respondent's "efficiency demand," and he reminded Respondent's officials that the Union had signed a confidentiality agreement. (Tr. 31; GC Exh. 7.) Jackson testified that he then informed the Union that the contractors gave the Respondent flexibility to expand and contract its workforce, and that cost was only part of the equation. (Tr. 110–111.) Specifically, Jackson testified that he informed the Union ". . . the use of supplemental contractors and the expanding contracting of our workforce is necessary for our flexibility, and the cost was only part of that." (Tr. 110–111.)

In an email dated September 18, 2015, Claar again requested that Respondent provide the information from the second item of the May 21 request to the Union by September 29. (GC Exh. 9) On September 29, Jackson sent a letter to Queen stating that the Respondent intended to hire zero to four craft workers, but he did not provide any of the information requested by the Union in its May 21 or September 18, 2015 written requests. (GC Exh. 10.)

In a letter dated October 5, 2015, Jackson informed Queen that he had received the Union's second request for "wage/roll-up/overhead costs of these contractors' employees." (GC Exh. 12.) In that letter, Jackson stated:

> [I]n our meeting on September 14, Ray [sic] Claar and Alan Sampson stated that this information was needed to be able to prove that the Union can do things more efficiently. I again responded that contracting supplemental workers is a means to expand and contract our workforce to meet the cyclical nature of our business, and the costs do not alter the Company's need to maintain that operational flexibility. (GC Exh. 12, p. 1.)

Jackson then stated that since the Union allegedly failed to "demonstrate a legitimate purpose for the requested subcontracting costs, and because cost is not the primary determinative factor for the Company contracting this work, we do not believe the Union has met it obligation to establish the relevance of this information." (GC Exh. 12, p. 2.)

On January 8, 2016, the union representatives, including Claar, and Respondent's representatives, including Jackson, met again concerning the Union's information request. In that meeting, the Respondent provided the Union with a document it alleged to be a comparison of the average billable rate it paid to contractors for certain maintenance job classifications to the average billable rate for the unit employees. (Tr. 39–40.) The classifications on the document consisted of laborer, millwright, crane operator, carpenter, and electrician. (GC Exh. 11.) The list of classifications was not accompanied by supporting documentation or records. The Respondent also did not present the Union with an opportunity to review or inspect the documents upon which the summary list was based. (Tr. 78.) In that meeting, Jackson told the union officials that the list was in response to their information request, but Claar told him the list was not sufficient to satisfy the request. In addition, both Claar and Martin told Jackson that the information was not helpful because it was an average rate, and it did not indicate which contractors were being paid or the amounts paid. (Tr. 39; 77.) Furthermore, the Union informed the Respondent that the list did not include the classification of instrument tech or mechanic, one of the three "core crafts" in the Respondent's maintenance groups and Respondent's second largest maintenance job classification. (Tr. 40.) Finally, the Union informed the Respondent that the summary did not show what costs were included and excluded in calculating the averages, or what "rolls into this number." (Tr. 41.)

It is undisputed that the Respondent never provided the wage, roll up, and overhead costs of contractor employees that the Union requested on May 21 and September 18, 2015. James Nelson, the Respondent's director of global procurement, testified that he was aware of the information the Union requested regarding maintenance contractor costs, but he did not provide it because he viewed that information as "confidential." (Tr. 128–129.) Instead, Nelson testified that he presented the Union with a weighted average billable rate for six different classifications in "summary form." (GC Exh. 11.) As an explanation of why Nelson deemed the information confidential, he testified that if the Respondent disclosed such requested information, it "could compromise the trust that we have with our contractors." (Tr. 129.) He further testified that the Respondent had several internal confidentiality policies that he had the authority to implement and follow. (Tr. 131; R. Exhs. 7, 8, and 9.)

Item 2, even after Sampson's statement, I provide no weight or significance to Sampson's statement the he "had everything he needed."

[6] Claar's notes from the meeting reflect that Jackson said "you all need to tell us how you can do this work more efficiently." (GC Exh. 7.) Jackson did not dispute Claar's assertion, testifying that he said "show us how. . . or something like that. . . ." (Tr. 118.)

[7] Claar's notes reflect that he stated "If we are going to compare efficiency we need the pay rates." (GC Exh. 7, p. 2; Tr. 31.)

Nelson, however, failed to explain why the confidentiality agreement the Respondent signed with the Union did not satisfy the Respondent's concerns for confidentiality of the information requested.

The Union did not file grievances over the use of contractors performing routine maintenance work, and the Union did not submit the Respondent's failure to provide the information requested to the National Oil Bargaining Program's dispute resolution procedure.

ANALYSIS

1. The legal precedent

It is well settled that an employer's duty to bargain collectively under Section 8(a)(5) of the Act includes the duty to supply requested information to a union that is the collective-bargaining representative of the employer's employees if the requested information is relevant and reasonably necessary to the union's performance of its responsibilities. *NLRB v. Acme Industrial Co.,* 385 U.S. 432, 435–436 (1967); *NLRB v. Truitt Mfg. Co*., 351 U.S. 149 (1956); *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979); see also Central Soya Co., 288 NLRB 1402 (1988). This duty is not limited to contract negotiations but extends to requests made during the term of the contract for information relevant to and necessary for contract administration and grievance processing. *Beth Abraham Health Services*, 332 NLRB 1234 (2000). The standard for determining the relevancy of requested information is a liberal one and it is necessary only to establish "the probability that the desired information is relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." Id. at 437. See also *Leland Stanford Junior University*, 262 NLRB 136, 139 (1982), and cases cited therein. Therefore, the information must have some bearing on the issue between the parties but does not have to be dispositive. *Kaleida Health, Inc*., 356 NLRB 1373, 1377 (2011).

Where the union's request is for information pertaining to employees in the bargaining unit, that information is presumptively relevant and the Respondent must provide the information. However, where the information requested is not presumptively relevant to the union's performance as the collective-bargaining representative, the burden is on the union to demonstrate the relevance of the information requested. *Disneyland Park*, 350 NLRB 1256, 1257–1258 (2007); *Richmond Health Care*, 332 NLRB 1304 (2000); *Associated Ready Mixed Concrete, Inc*., 318 NLRB 318 (1995), enfd. 108 F. 3d 1182 (9th Cir. 1997). Where the requested information pertains to matters outside the bargaining unit and is not presumptively relevant, the information must be provided if the surrounding circumstances put the employer on notice as to the relevance of the information or if the union shows why the information is relevant. *National Extrusion & Mfg. Co*., 357 NLRB 127 (2011). Where a showing of relevance is required because the request concerns non-unit matters, the burden is "not exceptionally heavy." *Shoppers Food Warehouse*, 315 NLRB 258, 259 (1994). *Leland Stanford Junior University*, 262 NLRB 136, 139 (1982), enfd. 715 F.2d 473 (9th Cir. 1983). This burden is satisfied when the union demonstrates a reasonable belief, supported by objective evidence, that the requested information is relevant. *Disneyland Park*, supra at 1258; *Knappton Maritime Corp.,* 292 NLRB 236, 238–239 (1988).

The Board has held that information requested pertaining to subcontracting agreements, even if it relates to the bargaining unit employees' terms and conditions of employment, is not presumptively relevant, and therefore a union seeking such information must demonstrate its relevance. *Disneyland Park*, supra at 1258; *Richmond Health Care*, 332 NLRB 1304, 1305 fn.1 (2000). Specifically, on the subject of subcontracting situations, the Board in Disneyland Park held that a broad, discovery-type standard is utilized by the Board in determining the relevance of requested information, and that potential or probable relevance is sufficient to give rise to an employer's obligation to provide information. Id. In that regard, in Disneyland Park, the Board held that to demonstrate relevance, the General Counsel must present evidence either (1) that the union demonstrated relevance of the nonunit information, or (2) that the relevance of the information should have been apparent to the Respondent under the circumstances. *Disneyland Park*, supra at 1258; See also *Allison Co*., 330 NLRB 1363, 1367 fn. 23 (2000); *Brazos Electric Power Cooperative, Inc*., 241 NLRB 1016, 1018–1019 (1979), enfd. in relevant part 615 F.2d 1100 (8th Cir. 1980). Absent such a showing, the employer is not obligated to provide such requested information.

The Board has also held that "[t]he union's explanation of relevance must be made with some precision; and a generalized, conclusory explanation is insufficient to trigger an obligation to supply information." *Disneyland Park*, supra at 1258 fn. 5; *Island Creek Coal*, 292 NLRB 480, 490 fn. 19 (1989); see also *Schrock Cabinet Co*., 339 NLRB 182 fn. 6 (2003). For a union to show the relevance of an information request, it must do more than cite a provision of the collective-bargaining agreement. It must demonstrate that the contract provision is related to the matter about which information is being sought, and that the matter is within the union's responsibilities as the collective-bargaining representative. *Disneyland Park*, supra at 1258.

2. The information requested by the Union was necessary and relevant to the performance of its duties as the collective-bargaining representative of the unit employees

Since the information requested in this case pertains to the various costs associated with Respondent's use of outside contractors to perform routine maintenance work, it is not presumptively relevant, and the Union must demonstrate its relevance. *Disneyland Park*, supra at 1258. In this matter, however, I find the relevance of the information sought has been clearly established by the surrounding circumstances which put the Respondent on notice as to its relevance. It is undisputed that in the nationwide strike that occurred, the Respondent's use of contractors to perform maintenance work was one of the underlying issues of that labor dispute, and that issue had subsequently been resolved by the parties' signed agreement to bargain over ways in which such work could be returned to the bargaining unit employees. Such circumstances were clearly sufficient to put the Respondent on notice that the requested information was relevant and should have been produced.

In addition to the surrounding circumstances, the Union also specifically and unequivocally demonstrated the relevance of the information sought. The pattern agreement that the Respondent and Union negotiated contained a "Letter Agreement" concerning maintenance training and development, by which the parties specifically agreed to meet and bargain over the ways the contracted out routine maintenance work could be efficiently performed by unit employees and thereby be returned to the bargaining unit. Consistent with that agreement, on April 8, 2015, the Union requested that the Respondent bargain over the ways in which such maintenance work could be performed by unit employees, and in response, Jackson agreed to bargain over that subject. As mentioned above, in a bargaining session on August 13, Jackson specifically asked the Union officials to show how the bargaining unit employees could perform the routine maintenance work more efficiently. In that connection, in the bargaining session on September 14, 2015, Union Officials Claar and Kinder explained to the Respondent's officials that the Union needed the information in order to respond to Respondent's request that the Union show how it could allegedly perform the maintenance work more efficiently than the outside contractors.

Based on the above, I find that the Union established the relevance of the information under the legal standard set forth in Disneyland Park, supra, by not only presenting evidence demonstrating the relevance should have been apparent to the Respondent under the circumstances, but also by presenting specific and precise evidence establishing that the Union conveyed and explained to Respondent the relevance of the material sought. *Disneyland Park*, supra at 1257–1258. Accordingly, the Union demonstrated the probability that the desired information was relevant, and that it would be of use to the Union in carrying out its statutory duties and responsibilities.

The Respondent argues in its brief that the information requested is not relevant because the Union did not file a grievance over the subcontracting. The Respondent contends that since there is an "absence of any real or contemplated grievance" concerning subcontracting, the information is "neither relevant nor necessary." (R. Br. p. 10.) This argument, however, lacks merit. The Respondent's reliance on the filing of a grievance is misplaced because whether the Union filed a grievance over the subcontracting is immaterial. In this case, the relevance was clearly shown by the parties' agreement to bargain over ways in which maintenance work could be returned to the unit, and by the Respondent's request during bargaining that the Union show or prove that such work could be done more efficiently by the unit employees.

The Respondent also argues that since it allegedly utilizes contractors for the flexibility they offer and the "variability of maintenance demands," rather than the lower costs of subcontracting, the information sought is not relevant. (R. Br. p. 10.) This argument is likewise baseless and must be dismissed. In the first place, Respondent's assertion that costs were not a factor in subcontracting the work is not supported by the record. In fact, that assertion is specifically belied by the admission of Respondent witness Jackson, who stated in his letter to the Union dated October 5, 2015, that cost was not "the primary determinative factor" in Respondent's decision to utilize contractors, thereby suggesting that cost was at least a secondary factor. Jackson also admitted in his testimony that cost is at least part of the Respondent's consideration for using subcontractors for maintenance work when he stated "…cost is only part [of subcontracting]." (Tr. 110–111.) Finally, even if the Respondent utilized contractors because of the flexibility they may offer, such a factor does not negate the relevance that has already been demonstrated by the surrounding circumstances and the direct evidence that Respondent requested during bargaining that the Union show or prove that the unit employees could do the maintenance work more efficiently. The wage, roll up, and overhead costs of the contractor employees certainly had potential or probable relevance with regard to the efficiency of such work.

3. The Respondent's confidentiality defense to supplying the information lacks merit and does not preclude its obligation to provide the information requested

In the Respondent's August 7 written response to the Union's information request for the wage, roll up, and overhead costs of the contractor employees, besides claiming the information was allegedly irrelevant, it also asserted that the information ". . . involves highly sensitive, confidential information involving the Company's business relationships with third parties. . . [and] that "[d]isclosing such information could damage the Company's ability to reach agreements with these third parties." (GC Exh. 6.) Despite that assertion, in its post-hearing brief the Respondent failed to elaborate on this confidentiality claim and it failed to provide any case law in support of an alleged confidentiality defense.

Under Board law, in issues of confidentiality a party may refuse to furnish confidential information to the other party in a collective-bargaining relationship under certain conditions. The refusing party must initially show that it has a legitimate and substantial confidentiality interest in the information sought. *Northern Indiana Public Power,* supra; *Pennsylvania Power Co.*, 301 NLRB 1104, 1105 (1991). If that showing is made, the Board balances the need of the party requesting the information against any "legitimate and substantial confidentiality interests" established by the refusing party. *Howard Industries, Inc*., 360 NLRB No. 111, slip op. 2 (2014), citing *Detroit Edison v. NLRB*, 440 U.S. 301, 315, 318–320 (1979); See also *Kaleida Health, Inc*., 356 NLRB 1373, 1378 (2011). The Board has found that the balance must then favor the party asserting confidentiality. *Detroit Edison*, supra; *Detroit Newspaper*, supra. When a party is unable to establish confidentiality, the balancing of interests is not required and the information must be disclosed. Detroit Newspaper, supra. Finally, even if such conditions are satisfied, the party may not simply refuse to provide the requested information, but must instead seek an accommodation that would allow the requesting party an opportunity to obtain the information it needs while protecting the party's interest in confidentiality. *Northern Indiana Public Power*, supra; *Borgess Medical Center*, 342 NLRB 1105, 1106 (2004).

In *Detroit Newspaper Agency*, 317 NLRB 1071 (1995), the Board defined some types of information that give rise to a legitimate and substantial confidentiality interest:

> Confidential information is limited to a few general categories: that which would reveal, contrary to promises or reasonable expectations, highly personal information, such as individual medical records or psychological test results; that which would reveal substantial proprietary information, such as trade secrets; that which could reasonably be expected to lead to harassment or retaliation, such as the identity of witnesses; and that which is traditionally privileged, such as memoranda prepared for pending lawsuits. Id. at 1073.

In Detroit Newspaper, the Board was clear that information accorded confidential status "is limited to a few general categories" as those described above. The Board dismissed an employer's claim of a confidentiality interest in that case pertaining to an internal environmental safety audit report because it "falls outside these general categories." Id.

In *Northern Indiana Public Service Co*., 347 NLRB 210, 211 (2006), the Board held however, that its formulation set forth in Detroit Newspaper was not intended to be exhaustive. In that case, the Board held that it has "considered whether the information was sensitive or confidential within the factual context of each case." Id. In Northern Indiana Public Service Co., supra, the Board was presented with the issue of whether an employer must comply with a union's request for copies of notes from interviews conducted by the employer in investigating a bargaining unit employee's complaint of threatening conduct in the workplace. Id. at 210. In that case, the Board majority found the information was confidential and the employer's interest in the confidentiality of such notes outweighed the union's need for the information. Id. at 211. In finding that a confidentiality interest had been established, the Board majority relied, inter alia, on the fact that the notes of the alleged threats of workplace violence were created under the express promise of confidentiality, and the fact that witnesses testified they would have provided less information if they had not been assured of confidentiality. Id. at 211–212. The Board also reasoned that such investigations are often necessary for safety in the workplace and without such statements the employer would be handicapped in protecting its employees from harm by verifying and correcting workplace misconduct. Id. at 212. Moreover, the Board reasoned that an individual's participation in such an investigation, whether as complainant or as a witness, may subject that individual to intimidation and harassment by coworkers or supervisors. Id. As such, the Board determined in that case that there was sufficient evidence that gave rise to a legitimate and substantial confidentiality interest. Id.[8]

The wage, roll up, and overhead costs of contractor employees requested by the Union in the instant case do not fall within the "general categories" of information set forth in Detroit Newspaper Agency which would give rise to a legitimate and substantial confidentiality interest. In addition, the Respondent failed to present evidence establishing that the requested information warrants a legitimate and substantial interest in confidentiality. The Respondent asserted in its August 7 letter to the Union that the request involves "highly sensitive, confidential information involving the Company's business relationships with third parties. . . [and]. . .[d]isclosing such information could damage the Company's ability to reach agreements with these third parties." However, it only offered the testimony of Nelson, the Respondent's director of global procurement, who stated that the Respondent had several internal confidential policies that he had the authority to implement and follow, and he simply testified that he deemed the requested information "confidential" based on his assertion that if such information were disclosed, it "could compromise the trust that we have with our contractors."

Other than those vague assertions, the Respondent failed to present any specific evidence establishing a legitimate and substantial confidentiality interest that would prevent disclosure of the information. In this regard, the record is devoid of any evidence showing that contractor information such as wages, roll up, and overhead costs were to be kept confidential pursuant to agreements, signed or otherwise, with the Respondent. The record likewise does not show that the Respondent expressly conveyed promises of confidentiality for such information to its contractors. The Respondent also failed to present evidence showing that disclosure of such information would prevent the Respondent from reaching agreements with contractors or third parties. The Respondent's willingness to grant confidentiality to such documents cannot, by itself, create a legitimate interest in confidentiality for purposes of avoiding disclosure of otherwise relevant information to the Union.

Even assuming the Respondent presented credible evidence that it conveyed express promises of confidentiality to its contractors, such evidence by itself would be insufficient to establish a legitimate confidentiality interest. As mentioned above, while the Board majority in Northern Indiana Public Service Co., supra, found that a promise of confidentiality is relevant to the issue of whether the information will be considered confidential, that case involved other factors beyond the vague assertion of confidentiality which is found in the instant case. For example, in Northern Indiana Public Service specific evidence was presented, such as the fact that witnesses testified they would have provided less information if they had not been assured of confidentiality, that without such confidential statements the employer would be hindered in its ability to protect its employees from harm by verifying and correcting workplace misconduct, and that the employee's participation in such an investigation, whether as complainant or as a witness, may subject that person to intimidation by coworkers or supervisors. *Northern Indiana Public Service Co*., supra at 212.

There is no Board precedent holding that a promise or assertion of confidentiality by itself, converts otherwise nonconfidential information into confidential information. In the collective-bargaining process, a union's right to request and receive information relevant and necessary to its duties as a bargaining representative is critical to that process, and an employer can-

[8] In other decisions following *Detroit Newspaper,* the Board in *GTE California, Inc*., 324 NLRB 424 (1997), also recognized a confidentiality interest in the names and unlisted telephone numbers of customers whose complaints led to an employee's discharge, and in *West Penn Power Co*., 339 NLRB 585 (2003), enfd. in part 394 F.3d 233 (4th Cir. 2005), recognized a confidentiality interest in an investigative report concerning an altercation between two employees..

not unilaterally limit that important right and insulate information from disclosure simply by asserting or promising not to disclose such information to the union. Thus, I find that Respondent's general assertions, supported only by vague testimony, are insufficient to establish a substantial and legitimate confidentiality interest in the contractor wages, roll up, and overhead costs, and that information must be produced. *Howard Industries, Inc*., supra slip op. 2, fn. 4; *Detroit Newspaper Agency*, supra at 1073–1074.

In addition, even assuming the evidence in this case established a substantial and legitimate confidentiality interest in the contractor wages, roll up, and overhead costs, I find the evidence is nevertheless insufficient to establish that the Respondent's confidentiality interests would outweigh the Union's need for the information. As mentioned above, the Respondent's general assertion of confidentiality and vague testimony, without more, is insufficient to overcome the Union's strongly established need for the information which is relevant and necessary to Respondent's request during bargaining that the Union show or prove that the bargaining unit employees could perform the work of the contractors more efficiently.

4. Even if Respondent established a confidentiality interest and that interest outweighed the Union's need for the information, the alleged confidentiality defense lacks merit because Respondent failed to establish that the parties' executed confidentiality agreement was insufficient to address its confidentiality concerns

In addition, even assuming that Respondent satisfied both requirements that it show a legitimate and substantial confidentiality interest in the information sought, and that its confidentiality interests outweighed the Union's need for the information, the analysis does not end there. As mentioned above, even if those conditions are satisfied, the Respondent may not simply refuse to provide the information. Instead it is required to seek an accommodation that would allow the requesting party an opportunity to obtain the information it needs while protecting the party's interest in confidentiality. *Postal Service*, 364 NLRB No. 27, slip op. at 2 (2016); *Northern Indiana Public Power*, supra; *Borgess Medical Center*, supra; See also *Olean General Hospital*, 363 NLRB No. 62, slip op. at 6 (2015) (an employer's confidentiality interest "does not end the matter;" the employer must also notify the union in a timely manner and seek to accommodate the union's request and confidentiality concern).

The record in this case establishes that the parties did, in fact, establish an accommodation to address any confidentiality concerns of the Respondent. As set forth in the tentative agreement, they negotiated a confidentiality agreement on August 6, 2015, to provide protection for the information to be provided in response to the Union's May 21 information request.[9] In that confidentiality agreement, the Union agreed that if it sought certain documents that were confidential or proprietary in connection with the collective-bargaining, it would keep those documents confidential. (GC Exh. 5.) The confidentiality agreement is detailed and extensive, providing inter alia, that: all information provided to the Union must be kept confidential and cannot be disclosed without the Respondent's written consent; the information shall only be transmitted to those on a "need to know" basis; the Union is responsible for breaches of the agreement; the Union must inform Respondent if it is required to disclose information pursuant to a subpoena so that Respondent may seek a protective order; the Union must keep a record of those who are permitted access to the information; the Respondent has no liability to the Union as a result of the use of the information; the Respondent is entitled to specific performance and injunctive relief upon breach of the agreement; and if the Union is required to disclose the information by court order the Union shall move the court to file it under seal or through some comparable protective mechanism.

Although the Union signed the confidentiality agreement in this case, there is no evidence that the Respondent ever approached the Union to discuss or bargain over why it may have considered that agreement inadequate to protect the information requested in Item No. 2 of the request, or that it requested bargaining over another confidentiality agreement that might offer greater protection for those documents. In fact, the record is devoid of any evidence that the executed confidentiality agreement was in any way insufficient to address the Respondent's claim that the requested contractor wages, roll up, and overhead costs were confidential. Likewise, the record establishes no objection, contention, or assertion from Respondent that the confidentiality agreement reached was in any way deficient, or that the agreement was in any way unenforceable or not applicable to the information requested in this case. I find that if in fact the confidentiality agreement negotiated and agreed to by the Union was insufficient or inadequate, it was incumbent upon the Respondent to notify the Union of that fact and to request bargaining over an agreement that offered more protection. It is undisputed that the Respondent failed to take any such action, which I find is yet another basis to dismiss its confidentiality defense as meritless.

5. The Respondent's defense that it allegedly complied with the information request by providing the Union with a "summary," also lacks merit and must be dismissed

Finally, the Respondent argues that it satisfied its obligation to provide the information when it supplied the Union with a summary consisting of "[a]ggregate weighted average costs of core craft workers supplied by outside parties. . . ." (R. Br. p. 11.) In that regard, instead of providing the information requested in Item No. 2, the Respondent presented the Union with a weighted average billable rate for six different classifications in "summary form." (GC Exh. 11.)

The record clearly establishes that Respondent did not provide the information that the Union requested. In addition, I find that the summary the Respondent provided was not responsive to the Union's request, and the summary failed to satisfy the Respondent's obligation to provide the Union with the relevant and necessary information requested in Item 2 of

[9] In fact, in Jackson's written response to the information request, he specifically referenced the parties' confidentiality agreement, stating: "The parties having now agreed to a Confidentiality Agreement and subject to the terms of that agreement, dated August 6, 2015, the Company provides the following response to the Union's May 21, 2015 request for information. . . ." (GC Exh. 6; R. Exh. 4.)

its information request. Initially, I note that the information was incomplete as the classifications in the summary consisted of laborer, millwright, crane operator, carpenter, and electrician, and it did not include the classification of instrument tech or mechanic, one of the three "core crafts" in the Respondent's maintenance groups. In addition, union officials Claar and Queen credibly testified that the summary did not supply the information requested, and that they informed the Respondent that the summary was insufficient and unresponsive to the request. Specifically, the union officials testified that because the summary set forth an average rate and it did not indicate which contractors were being paid or the amounts paid, it failed to provide the information requested. (Tr. 39; 77.) Furthermore, the union officials informed the Respondent that the summary did not show what costs were included and excluded in calculating the averages, or what "rolls into [that] number." (Tr. 41) Finally, it is undisputed that the summary list was not accompanied by supporting documentation or records, and the Respondent did not provide the Union with an opportunity to review or inspect the documents upon which the summary was based. (Tr. 78.)

Board precedent also holds that the summary provided was not responsive to the Union's request, and it was insufficient to satisfy the Respondent's obligation to provide the information requested. The Board has long held that an employer does not satisfy its obligation to provide relevant information under the Act by offering the union summaries of the information requested or alternate documents. See *Merchant Fast Motor Line*, 324 NLRB 562, 563 (1997) (Board held that a union was not required to accept a respondent's declaration as to profitability or the summary of financial information offered by the respondent); *McQuire Steel Erection,* 324 NLRB 221 (1997) (payroll record summaries provided the union were found insufficient to meet respondent's statutory obligation to supply the requested information); *New Jersey Bell Telephone Co*., 289 NLRB 318, 330–331 fn. 9 (1988), enfd. mem. *NLRB v. New Jersey Bell Telephone Co.*, 872 F.2d 413 (3d Cir. 1989) (a summary of an employee's absence records found not to be acceptable and respondent's failure to produce the requested absence records upon which the summary was based violated Section 8(a)(5)). Thus, the Respondent's asserted defenses lack merit and are dismissed.[10]

Based on the above, I find that the Respondent failed and refused to provide or furnish the wage, roll up, and overhead costs of the contractor employees including any premiums and margins paid to the contractor firms and any bonus/completion milestones paid to them, as requested by the Union, in violation of Section 8(a)(5) and (1) of the Act.

[10] In its brief, the Respondent also argues as a defense that "[t]o the extent Marathon, in the interest of labor relations, and in furtherance of the NOBP letter agreement, fully responded to all but one of the [Union's] May 2015 requests, it has fully satisfied its obligation to provide the information under Sec. 8(a)(5), and then some." (R. Br. p. 11.) That contention, however, is unsupported by legal precedent and is baseless. It is well settled that an employer does not satisfy its obligation to furnish all relevant information by providing only some. *International Telephone & Telegraph Corp. v. NLRB*, 382 F.2d 366, 371 (3d Cir. 1967).

CONCLUSIONS OF LAW

1. The Respondent, Marathon Petroleum Co., d/b/a Catlettsburg Refining, LLC, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, and its Local 8–719, is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to provide the Union with information requested on May 21, 2015, and again on September 18, 2015, which was necessary and relevant to the Union's performance of its duties as the collective-bargaining representative of the unit employees.
4. The unfair labor practices committed by the Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated the Act by failing and refusing to furnish the Union with the information requested, and thereby engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended[11]

ORDER

The Respondent, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively with the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, and its Local 8–719 (the Union) by failing and refusing to provide it with the information requested on May 21, 2015, and renewed on September 18, 2015, which is relevant and necessary to the Union's performance of its duties as the collective-bargaining representative of the Respondent's operating and maintenance bargaining unit employees.

(b) In any like or related manner, restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish to the Union, in a timely manner, the information requested on May 21, 2015, and renewed on September 18, 2015, described as "wage/roll up/overhead costs of [the] contractor employees. . . [i]ncluding any premiums and margins paid to the contractor firms and any bonus/completion milestones paid to them."

[11] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Within 14 days after service by the Region, post at its facility in Catlettsburg, Kentucky, copies of the attached notice marked "Appendix."[12] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 21, 2015.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 1, 2016

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, and its Local 8–719 (the Union) by failing and refusing to furnish it with the information requested on May 21, 2015, and again on September 18, 2015, which is relevant and necessary to the Union's performance of its duties as the collective-bargaining representative of our employees in the operating and maintenance bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, in a timely manner, furnish the Union with the information requested on May 21, 2015, and again on September 18, 2015, described as "wage/roll up/overhead costs of [the] contractor employees. . . [i]ncluding any premiums and margins paid to the contractor firms and any bonus/completion milestones paid to them," which is relevant and necessary to the Union's performance of its duties as the collective-bargaining representative of our unit employees.

MARATHON PETROLEUM CO., D/B/A CATLETTSBURG REFINING, LLC

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/09-CA-162710 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

[12] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

CERTIFICATE OF SERVICE

In accordance with Federal Rule of Appellate Procedure 15(c)(1), I hereby certify that all parties admitted to participate in the agency proceedings below are being served with the Petition for Review, Corporate Disclosure Statement, and attached Decision, in the manner specified below, this 25th day of September 2018:

By overnight mail:

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/s/ Maurice Baskin